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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R No.25 of 1998
Date of decision:8.12.2006

The Commissioner of Income-Tax, Jalandhar ...Petitioner

Versus

Shri Harpal Singh, Wing Commander (Retd.) Jalandhar

...Respondent

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Dr.N.L.Sharda, Advocate for the revenue

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JUDGMENT

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar arising out of its order dated 23.6.1997 passed in I.T.A.No.253/ASR/1996, in respect of the assessment year 1992-93.

> "Whether on the facts and in the circumstances of the case, the Ld. Tribunal is right in law in setting aside the order of the CIT(A) who reduced the penalty from Rs.1,00,000/- to Rs.25,000/- levied u/s 271D of the Income Tax Act, 1961 for violation of the provisions of Section 269-SS of the Income Tax Act, 1961?"

The assessee is a retired Wing Commander, who derives income from pension from defence services and interest income on deposits with the bank and other concerns. During assessment for the assessment year 1992-93, the Assessing Officer found that the assessee had accepted a loan of Rs.1,00,000/- on 26.7.1991 in cash from his father, which was in violation of the provisions of Section 269-SS of the Income Tax Act, 1961(for short "the Act"). Reference was thus made for imposition of penalty under Section 271-D of the Act. Accordingly, Additional Commissioner of Income-tax, Range-I, Jalandhar vide order dated 22.8.1995 imposed the penalty of Rs.1 lac.

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The assessee preferred an appeal before the C.I.T.(A), who reduced the penalty to 25% of the amount.

On cross appeal to the Tribunal, appeal of the assessee was accepted and that of the revenue was dismissed.

We have heard learned counsel for the revenue and perused the record.

From the order of Tribunal, we find that a finding has been recorded that assessee was a young son of the retired Wing Commander and wanted to construct his house and out of love and affection and apprehension of old age wanted to distribute the assets among his children without any intention to recover back the amount that was paid. In these circumstances, receipt of cash by the assessee could not be treated as loan or deposit.

We are in agreement with the view taken by the Tribunal and on the finding recorded no case is made out for imposition of penalty. It is well settled that if there was reasonable explanation for a cash transaction, no penalty shall be imposable on the person or the assessee. Section 273 B was added in the Act to incorporate this provision, even in the absence of such a provision, genuine and bonafide transaction does not invite penalty. Reference may be made to order dated 11.9.2006 passed by this Court in ITA No.102 of 1999 (**The Commissioner of Income-Tax, Jalandhar Vs. M/S Avert Chemicals (P) Limited, Jalandhar)** wherein it was held as under:-

> "It has been held by the Hon'ble Supreme Court in **Assistant Director of Inspection (Investigation) Vs. Kum.A.B.Shanthi, (2002) 255 ITR 258** that if cash payment was on account of reasonable belief, penalty will not be justified. It was observed at page 266:-
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> > "It is important to note that another provisions, namely Section 273 B was also incorporated which provides that notwithstanding anything contained in the provisions of Section 271 D, no penalty

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> shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision if he proves that there was reasonable cause for such failure and if the assessee proves that there was reasonable cause for such failure to take a loan otherwise than by account-payee cheque or account-payee demand draft, then the penalty may not be levied. Therefore, undue hardship is very much mitigated by the inclusion of section 273B in the Act. If there was a genuine and bonafide transaction and if for any reason the tax payer could not get a loan or deposit by account-payee cheque or demand draft for some bonafide reasons, the authority vested with the power to impose penalty has got discretionary power."

In view of the above, we answer the question referred against the Revenue and in favour of the assessee.

The reference is disposed of.

(Adarsh Kumar Goel)
Judge

December 08,2006 **(Rajesh Bindal)**
Pka **Judge**